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**MAR 17 2004**

In re Application of  
Angelo Bosco et al.  
Application No. 10/648,776  
Filed: August 12, 2003  
Attorney Docket No. 851063.485

OFFICE OF PETITIONS  
DECISION GRANTING PETITION

This is a decision on the petition to correct filing date, filed under 37 CFR 1.10(e)<sup>1</sup> on December 13, 2003, requesting that the above-identified application be accorded a filing date of August 12, 2003 rather than the presently accorded filing date of August 25, 2003.

Petitioner alleges that the application was deposited in "Express Mail" service with the U.S. Postal Service on August 12, 2003. In support, petitioner provided a copy of the Express Mail label, receipt No. EV336610850US, showing a Date-in of, August 12, 2002. The same Express Mail receipt number was referred to on the itemized Utility Patent Application Transmittal sheet submitted with the present petition.

Petitioners argue that the Express Mail packet no. EV336610850US was returned by the United States Postal Service (USPS) because due to USPS error, the addressee (USPTO) was obliterated and the postal service was unable to deliver the package. The package was returned to sender on August 22, 2003. Petitioners have provided a copy

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<sup>1</sup> 37 CFR 1.10(e) provides that:

Any person mailing correspondence properly addressed to the Office with sufficient postage utilizing "Express Mail Post Office to Addressee" service of the USPS but not received by the Office, may petition the Commissioner to consider such correspondence filed in the Office on the USPS deposit date, provided that:

(1) The petition is filed promptly after the person becomes aware that the Office has no evidence of receipt of the correspondence;

(2) The number of the "Express Mail" mailing label was placed on the paper(s) or fee(s) that constitute the correspondence prior to the original mailing by "Express Mail";

(3) The petition includes a copy of the originally deposited paper(s) or fee(s) that constitute the correspondence showing the number of the "Express Mail" mailing label thereon, a copy of any returned postcard receipt, a copy of the "Express Mail" mailing label showing the "date-in," a copy of any other official notation by the USPS relied upon to show the date of deposit, and, if the requested filing date is a date other than the "date-in" on the "Express Mail" mailing label or other official notation entered by the USPS, a showing pursuant to paragraph (d)(3) of this section that the requested filing date was the date the correspondence was deposited in the "Express Mail Post Office to Addressee" service prior to the last scheduled pickup for that day; and

(4) The petition includes a statement which establishes, to the satisfaction of the Commissioner, the original deposit of the correspondence and that the copies of the correspondence, the copy of the "Express Mail" mailing label, the copy of any returned postcard receipt, and any official notation entered by the USPS are true copies of the originally mailed correspondence, original "Express Mail" mailing label, returned postcard receipt, and official notation entered by the USPS.

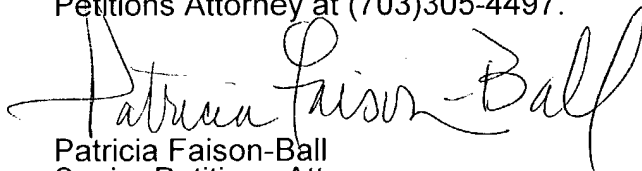
of the returned Express Mail Label as proof of the allegation. The package was then remailed on August 25, 2003 using Express Mail Label EV336611078US. The declaration of David V. Carlson, Attorney of Record, wherein Mr. Carlson attests to the sequence of events that lead to the wrong filing date being accorded the above identified application.

The Office considers the date the paper or fee is shown to have been deposited as "Express Mail" to be the "Date In" on the Express Mail label.<sup>2</sup> That is the date that verifies that the package was actually mailed. In view of the above, the evidence is convincing that the application was deposited as "Express Mail" with the USPS on August 12, 2003.

In view of the above, the petition is granted. No fee is due and none will be charged.

The application is being returned to Office of Initial Patent Examination for reprocessing with a filing date of August 12, 2003, not August 25, 2003.

Telephone inquiries concerning this matter may be directed to the undersigned Petitions Attorney at (703)305-4497.



Patricia Faison-Ball  
Senior Petitions Attorney  
Office of Petitions

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<sup>2</sup>MPEP 513.